

MHRG170004482022



ORDER BELOW EXH. 07
IN SPECIAL POCSO CASE NO.32/2022
KHOPOLI CR NO.27/2022
THE STATE OF MAHARASHTRA V/S UMEDBHAI @ UMESH
MAGANBHAI HARIJAN
(PASSED ON 01st DAY OF AUGUST, 2022)

This application is on behalf of the applicant/accused vide Section 439 of the Code of Criminal Procedure to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh.08.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code of Criminal Procedure ?	No.

II.	What Order ?	The application is Dismissed.
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REASONS

4. Perused application, say filed. Heard learned advocate for the applicant/accused and learned A.P.P Smt.Wade for State. The investigating officer is present. The mother of first victim and father of second victim are present. They objected to release the accused on bail.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is the mother of victim. She stays with her family including first victim. The applicant is neighbourer. He is married. He has one son aged 12 years. The applicant is familiar with the neighbourers. He used to bring sweet or snacks or anything like that to the children in the colony. During 25.01.2022 to 03.02.2022, the wife of applicant has gone to one relative to see him. During this period, on one day in the evening at about 4.00 to 5.00 p.m., the informant was at the house of her sister-in-law. At that time, the applicant has brought ice-cream from the nearing shop for her son, first victim, second victim and

for himself.

6. Further, informant came back to her house, that time first victim and second victim have not found. Her son was at home. She asked to her son about victim, that time he disclosed that the victims are at the house of applicant. Informant noticed that the house of applicant was closed. Her son given call to the victim. The applicant opened the door, that time both victims came outside. The second victim has gone to her house. The informant asked to the first victim as what she was doing by closing the door inside the house of applicant. She has not replied anything and then stated she was watching TV at the house of applicant. The first victim was scared. The informant suspected some untoward incident. Informant has not asked to the applicant that time.

7. Then the applicant used to sit outside his house whenever first victim used to play in front of her house or the first victim was brooming the house. On 06.02.2022, the wife and the children of applicant have gone outside. At about 4.30 p.m, applicant was in front of the house and currency note of Rs.50/- was in his hand. The second victim came in the door of the house and asked to the first victim that today the applicant was giving ice-cream to them. At that time, informant got suspicion and asked to victim No.1 and 2 not to go at the house of the applicant.

8. Further, informant again asked to the first victim what was happened on last occasion. The first victim disclosed that the uncle under the garb of giving ice-cream called at his house and closed the door by latch. He has shown obscene video in the mobile to her. After eating ice-cream, the applicant put first and second victim to sleep on bed. The applicant removed clothes of first victim and touched to her body on back. He put his finger in her private part. He put his private part to her private part. Then the applicant issued threat to her. The applicant did the same act with the second victim.

REGISTRATION OF CRIME :

9. On that count, the mother of victim lodged the report Dated 07.02.2022 at Police Station, Khopoli. The Police Station Khopoli registered Crime No.27/2022 for the offence under Section 376AB, 341, 506 of the Indian Penal Code and Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) against the applicant/accused.

ARREST OF ACCUSED :

10. The applicant/accused is arrested on 07.02.2022 and produced before the Court on 08.02.2022 and initially remanded

to police custody till 12.02.2022 and then remanded to judicial custody. The accused is presently in judicial custody.

THE COMPLIANCE OF SECTION 40 READ WITH RULES- 4(13) AND 4(15) OF THE POCSO ACT - RIGHTS OF VICTIM -

11. Recently Hon'ble High Court in the case of **Arjun Kishanrao Malge Vs. State of Maharashtra and others in Public Interest Litigation No.5 of 2021 Dated 08.04.2021** held that;

“when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.”

12. In pursuance of these directions, prosecution issued notice to the first and second victim. The said notice is served to them. The first victim is appeared with her mother. The second victim is appeared with her father. Thus, this court has extended opportunity to the parents of victim to have audience for hearing of this bail application.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?**AGE OF VICTIM :**

13. At the outset, in the present crime there are two victim girls. The first victim is aged 11 years 05 months and second victim is aged 7 years. The informant is mother of first victim. The house of second victim is adjacent and near to the house of first victim. Thus the victims are minor as such, they are child within definition of Section 2(d) of the Act.

PLACE OF OCCURRENCE :

14. The applicant is neighbourer to the house of informant. The house of applicant is exactly opposite to the house of informant. The doors of houses of them are face to face.

CHARGE-SHEET IN THIS CRIME :

15. The investigating officer has completed investigation of this crime. He filed charge-sheet against the accused on 07.03.2022. The offences levelled against accused under Section 376AB, 354A(1)(i), 354(1)(iii), 341, 506 of the Indian Penal Code and under Section 3, 4, 5(m), 6, 7, 8 of the Protection of Children from Sexual Offences Act.

ACCUSATIONS AGAINST THE APPLICANT :

16. In the light of recitals of FIR and on perusal of the charge-sheet, it appears that the applicant is neighbourer to the house of informant. He has called to victim No.1 and 2 at his house. Initially he has given to them ice-cream and then shown obscene video. The applicant put off clothes of the victims. The applicant touched to victim No.1 and touched with his private part to the private part of victim No.1. The victim No.1 initially was scared to disclose it and later on questioning by her mother she disclosed it.

WHETHER THE APPLICANT IS ENTITLED TO BAIL :

17. Learned advocate of applicant vehemently argued that there are variations in the statement of victim No.1 and victim No.2. The statement of victim No.2 is silent about the incident with her whereas, the statement of victim No.1 disclosed the incident with both the victims. The statement of victim No.1 is tutored by her mother. The incident of fingering is not mentioned in the medical report of victim No.1.

18. He further argued that the neighbourer Smt.Mohite by telephonically informed to wife of applicant that the victim No.2 is tutored before recording her statement in presence of learned

magistrate. This fact is stated by the victim No.2 to Smt.Mohite and to others. Thus, the statements are tutored at the instance of informant.

19. Learned A.P.P submitted that the victim No.2 is aged 7 years as such, she is not able to state to Smt.Mohite as narrated by the applicant. It is afterthought story. There is sufficient material against the applicant. Thus the grounds of application are not well founded. The victims used to call applicant as maternal uncle- (मामा).

20. The investigating officer was also present and he mentioned that the applicant deleted the video in his mobile as such, it was sent to Forensic Science Laboratory and its report is awaited. The informant was present for hearing of this application. She submitted that the victim No.2 has no biological mother. Her mother is expired. Her father re-married. Informant and others used to take care of victim No.2. There is short distance between the house of applicant and informant. The father of victim No.2 is present and he objected to release the applicant on bail.

21. In the light of this rival submission, it is apparent that the offence is aggravated penetrative sexual assault with victim No.1. Both the victims aged below 12 years. The applicant being

neighbourer is a man of trust as such, he bound to take care of victims, but instead of this he ravished them. The medical evidence of the victim No.1 reveals, the applicant touched her private part and he tried to touch her vagina. There is no evidence of penetrative sexual intercourse with victim No.2.

22. The statement of victims before learned magistrate substantiate the case of prosecution. The statement of other witnesses reveals the same. Thus, there is sufficient material against the applicant. The submission of learned advocate of applicant in respect of variations in the statements of victims at this stage is not well founded. There is no enmity between the applicant and informant so as to falsely implicate him. The submission of learned advocate of applicant that the victim No.2 is the tutored is apparently does not hold water since the tender age of victim No.2 is 7 years and how come she could disclose it to the neighbourers in the colony. This submission is unacceptable. The victim No.2 is not able to understand the facts of the incident.

23. On the backdrop of this factual position, it appears that present offence is not only serious, but it is heinous offence. The applicant has sexually assaulted and harassed two minor victims. The subsequent incident at the instance of applicant with both the victims on 06.02.2022 is avoided due to alertness of the informant.

Or else the victim could have been exploited by him once again. The applicant is a married and he has a son aged 12 years despite he has committed such heinous offence with two minor victims younger to the age of his son and these victims used to call him as a maternal uncle that itself sufficient to constitute the gravity of offence. The grounds of bail application are not well founded. The offence against him cannot be taken in a lighter mode or else it would frustrate the object of enacting POCSO Act.

24. In the light of foregoing, the applicant does not deserve for bail. I answer Point No.I in the negative. With this, I pass following order;

ORDER

1.	The application for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant is dismissed.
2.	Inform to Police Station Khopoli accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 01.08.2022

(K.G. Paldewar)
Additional Sessions Judge,
Panvel

Special Pocso Case No.32/2022
Khopoli CR No. 27/2022
11 The State V/s. Umedbhai @ Umesh Harijan
Exhibit No. 07

Arguments heard on	14 th day of July, 2022
Judgment/Order delivered on	01 st day of August, 2022
Dictated on	01 st day of August, 2022
Transcribed on	01 st day of August, 2022
Checked and signed on	01 st day of August, 2022

C E R T I F I C A T E

I affirm that the contents of this PDF file
Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 01.08.2022
Judgment/Order signed on : 01.08.2022
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 01.08.2022